76.

SUPREME COURT OF THE UNITED STATES.

No. 72.

JONATHAN STROUT ET AL., LIBELLANTS &c., APPELLANTS,

vs.

JAMES FOSTER ET AL., CLAIMANTS AND OWNERS OF THE SHIP LOUISVILLE.

ON APPEAL FROM THE CIRCUIT COURT U. S. FOR EAST LOUISIANA.

INDEX.

	Original.	Print.
Libel	1	3
Writ of seizure	3	4
Marshal's return	4	4
Claim and answer of James Foster et al.	4	5
Order of court—Bond	5	5, 6
Entries of record	7	7
Cause heard	8	8
Decree of district court	9	8
Testimony, documents, &c.	9	8
Deposition of C. Van Dyke	10	9
" " E. Cornel	12	10
" " Jos. Davis	13	11
" " J. S. Shuster	16	13
" " R. Hartley	20	15
" " B. A. Bukap	21	15
Protest	23	17
Bills numbered from Q to A.	24	18
Protest	34	26
Protest	38	28
Deposition of J. J. Garrin	42	30
" " John Bunker	43	31
Petition of appeal	44	31
Judge's order	45	32
Appeal bond	45	32
Writ of error to district court	47	33
Citation and service	48	34
Decree of circuit court	49	35
Opinion of court	50	36
Deposition of H. S. Souk	52	37
Petition of appeal	56	40
Appeal bond	57	40
Writ of appeal	59	41
Citation and service	60	42

S. D. Langtree, Print.

70

77.

UNITED STATES DISTRICT COURT,
Eastern District of Louisiana.

JONATHAN STROUT et als,
vs.
SHIP LOUISVILLE.

Be it remembered, that on the 13th day of June, Anno Domini one thousand eight hundred and thirty-six, A. W. H. Clapp, Wyer & Noble and Jonathan Strout by their proctor H. Lockett, Esq., came into court and filed the following libel, to wit:

To the Honorable the District Court of the United States, for the Eastern District of Louisiana, in Admiralty sitting.

The libel of A. W. H. Clapp, Wyer & Noble, and Jonathan Strout, owners of the ship Harriett, respectfully propounds, that the ship Louisville now at the port of New Orleans where the tide ebbs and flows and within the admiralty jurisdiction of your honorable court, is indebted unto your libellants in the sum of two thousand seven hundred and one dollars and seven cents, for this to wit: That on or about the 26th May, 1836, while your libellants said ship was lying at anchor on the high seas, to wit, outside the bar at the mouth of the south west pass, one of the outlets of the river Mississippi, the said ship Louisville then and there ran foul of and into your libellants ship Harriett as aforesaid, through carelessness or negligence or wilfully, by which running foul and into, as aforesaid your libellants ship was damaged in her rigging, sails, hull, tackle, &c., so badly as to be empelled to return to the port of New Orleans to repair and refit, which damage so done, to said hull, rigging, sails, tackle, &c., and the cost of repairs and refitting, wages of crew, pilotage and other expenses attending the said repairs and refitting, &c., amount to said sum of two thousand seven hundred and one dollars and seven cents, as is more fully and specially detailed: in the hereto annexed account making part of this libel, and which said sum said ship Louisville is liable for and bound to pay.

Wherefore, your libellants pray, that admiralty process may issue against the said ship Louisville, her tackle, apparel and furniture; that after monition and other due proceedings according to the laws and usages of the admiralty, she be condemned and sold to satisfy by privilege and preference the claim of your libellants, with his costs in this behalf expended, and that such other and further decree be rendered in the premises as to right and justice may appertain.

And your libellants will ever pray &c.

Signed H. LOCKETT,
Proctor.

Jonathan Strout, one of the libellants and agent for the others being duly sworn, deposeth that the material allegations of the above libel are true.

Signed JOHN. STROUT.

Sworn to and subscribed before me, this 13th day of June 1836.

Signed T. W. COLLINS,
Dy. Clerk.

Order.

In the absence of the judge let admiralty process issue as prayed for.

Signed T. W. COLLINS,
Dy. Clerk.

And the same day the following writ was issued from the clerk's office, to wit:

The President of the United States of America, to the Marshall of the Eastern District of Louisiana, or to his lawful deputy greeting:

You are hereby commanded forthwith, to seize and into your possession take, the ship Louisville, her tackle, apparel, furniture, &c., now libelled by A. W. H. Clapp, Wyer & Noble & Jonathan Strout in the district court of the United States for the eastern district of Lonisiana, and that you do cite and admonish their owner or owners, and all every other person or persons, having or pretending to have, any right, title or interest in or to the same, to be and appear, before a district court of the United States for the district aforesaid, to be holden at the city of New Orleans, on or before the fourteenth day from service hereof, to show cause if any they have or can, why the said ship Louisville, &c., should not be condemned and sold, agreeably to the prayer of the libellant; and how you shall have executed this warrant, that you may make return according to law.

Witness the honorable Samuel H. Harper, judge of the said court, the 13th day of June, 1836, and the 60th year of the Independence of the United States. [L. S.]

Signed T. W. COLLINS, *Dep'y Clerk.*

Marshall's Return.

Received June 13th, 1836, and on the same day, I seized and took into my possession, the within mentioned ship Louisville, her tackle, apparel and furniture, and gave notice as within commanded, and executed this writ in all other things as the law directs. The said ship was released and delivered to the claimants, June 17th, 1836. The clerk of honorable court having certified to me that said ship had been bonded according to law.

Signed J. H. HOLLAND, *Marshall.*

New Orleans, November 19th, 1836.

And afterwards on the 14th June, the following claim and answer was filed, to wit:

JONATHAN STROUT, et als, *vs.* SHIP LOUISVILLE. } In the district court of the United States in and for the eastern district of Louisiana.

Into the said court, by their proctor come James Foster senr., James Foster jr., Amos Palmer and Alexander S. Palmer, all residing in New York, and owners of the ship Louisville, libelled herein, and claiming said ship, as the true and lawful owners thereof, pray that she may be released from the custody of the marshall, on their executing a bond conditioned as the law directs.

And for answer to the libel exhibited against said ship Louisville, by the persons styling themselves owners of the ship Harriett, as set forth in said libel, these claimants of said ship Louisville say, that they are not liable or bound to pay said owners of said ship Harriet, any sum of money whatever, for the damages alleged in their said libel. That the accident mentioned in said libel occured when the said ship Louisville was under charge of a regular pilot, and in the proper navigation of said ship at a time, and in a place and under circumstances when said ship Louisville or her owners, could not prevent the accident complained of by the libellants—and are not responsible for the same; and in fact that the same occurred in consequence of the culpable negligence and want of proper skill, and due attention of the master, officers and crew of said ship Harriett.

Wherefore these respondents pray for the decree of this honorable court, in their favor, and for their reasonable costs, and as in duty bound will ever pray

By their Proctor,

Signed, L. C. DUNCAN.

Alexander S. Palmer, one of the above named claimants, being sworn, saith that he, together with Amos Palmer and James Foster senr., and James Foster jr., are the owners of the ship Louisville, libelled in the above entitled case, and that all the material allegations in the above claim are true.

Signed, A. W. PALMER.

Sworn to and subscribed before me this 14th June, 1836.

Signed, T. W. COLLINS, *Dep'y Clerk.*

And afterwards, on the 17th June, 1836, the following entry of record was made, to wit:

JONATHEN STROUT, et als, *vs.* SHIP LOUISVILLE. } No. 3811.

On motion of L. C. Duncan Esq., of counsel for claimants, it is ordered that the said ship Louisville be delivered to said claimants

upon executing a bond or stipulation, conditional as the law requires, in the sum of four thousand two hundred dollars, with A. Cohen as security. And on the same day the following bond was filed, to wit:

UNITED STATES DISTRICT COURT,
Eastern District of Louisiana.

JONATHAN STROUT, et als,
vs.
SHIP LOUISVILLE.

Know all men by these presents, that we, James Foster senr., James Foster jr., Amos Palmer and Alexander S. Palmer owners of the ship Louisville, and A. Cohen, are held and firmly bound unto Jonathan Strout, A. W. Clapp, Wyer & Noble, owners of the ship Harriett, in the just and full sum of fonr thousand two hundred dollars to which payment well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, firmly by these presents, sealed with our seals, and dated this fourteenth day of June, 1836. The condition of this obligation is such, that whereas the ship Louisville has been libelled by said Jonathan Strout, A. W. Clapp and Wyer & Noble aforesaid; and whereas said James Foster senr., James Foster jr., Amos Palmer and Alexander S. Palmer, have duly filed in the district court of the United States, for the eastern district of Louisiana, their claim for said ship Louisville. Now if the said James Foster senr., James Foster jr., Amos Palmer and Alexander S. Palmer shall well and truly pay, or cause to be paid, to the said Jonathan Strout, A. W. Clapp and Wyer & Noble, or to their certain attorneys, the sum of $2,701 07-100, being the amount claimed of said owners of said ship Louisville, in case the same shall be decreed by the court, to the said Jonathan Strout, A. W. Clapp, Wyer & Noble, upon the trial of the same, together with the costs of suit, then this obligation to be null and void, or else to remain in full force and virtue.

Signed, ALEXAFDER S. PALMER, [L. S.]
for self and other owners of ship Louisville.
A. COHEN, [L. S.]

Signed, sealed and delivered in presence of
Signed, L. C. DUNCAN.

Endorsed: Let the ship Louisville be delivered to the claimants on filing the within bond, in the clerk's office, 16th of June, 1836.
Signed, SAML. H. HARPER,
Judge U. S.

And afterwards, on the 21st December, 1836, the following entries of record were made, to wit:

JONATHAN STROUT et als,
vs. } 3811.
SHIP LOUISVILLE.

On motion of H. Lockett, Esq., of counsel for the plaintiff in this case, ordered that the return to the commissioners addressed to E. Rawle, associate judge of the city court of New Orleans, and enclosing the testimony of Joseph S. Shuster and others, were open and filed in open court.

JONATHAN STROUT et als,
vs. } 3811.
SHIP LOUISVILLE.

This cause came on to-day for trial, when, on motion of H. Lockett, Esq., it was ordered to be continued.

And afterwards, on the 27th day of December, the following receipt was endorsed on the back of the libel, to wit:

Received the account annexed to the libel, December 27th, 1836.
Signed, H. LOCKETT, *Pro.*

And afterwards, on the 16th January, 1838, the following notice was issued from the clerk's office, to wit:

UNITED STATES DISTRICT COURT,
Eastern District of Lousisiana.

JONATHAN STROUT et als,
vs.
SHIP LOUISVILLE.

To the claimants in this case.

The claimants in this case are hereby notified that this case is set for trial for Saturday next, the 20th instant, at 12 o'clock, M.
New Orleans, 16th January, 1838.
By order of court.
Signed, T. W. COLLINS,
Deputy Clerk.

To L. C. DUNCAN, Esq.,
Claimant's Proctor.

Marshal's Return on back.

Received January 16th, 1838, and same day served a copy of the within notice on L. C. Duncan in person.

Received January 17, 1838.

Signed, J. H. HOLLAND, *Marshal.*

And afterwards, on the 23d January, the following entry of record was made, to wit:

JONATHAN STROUT et als,
vs.
SHIP LOUISVILLE. } No. 3811.

This cause came on to-day for trial, H. Lockett, Esq., appearing for libellants, and L. C. Duncan, Esq., appearing for claimants, when, after hearing the testimony and arguments of counsel, the court took time to consider.

And on the 25th January the following entry of record was made, to wit:

JONATHAN STROUT et als,
vs.
SHIP LOUISVILLE. } No. 3811.

The court having maturely considered this case, now order, adjudge and decree, that a decree be entered up in favor of libellants, and against the ship Louisville, her tackle, apparel, and furniture, in the sum of two thousand seven hundred and one dollars and seven cents, and costs of suit.

Testimony, Documents, &c. filed on Trial.

COURT OF THE UNITED STATES
For the Eastern District of Louisina.

To E. Rawle, Esqr. or to any other Associate Judge of the City Court of the City of New Orleans:

Know ye, that reposing special trust and confidence in your integrity and ability, we hereby authorize and require you that you call and cause to come before you certain witnesses, and them duly examine on oath, touching and concerning certain matters and things in a cause now depending in the said court, wherein Jonathan Strout et als, are libellants, and the ship Louisville is libelled; and the same examinations so taken and reduced to writing you certify under your hand and seal, and send enclosed to this court without delay, to be read in evidence upon the trial of said cause, and send also this writ.

Witness the honorable Samuel H. Harper, judge of the said court, at the city of New Orleans, this seventeenth day of June, Anno Domini 1836, and the 60th year of the Independence of the United States of America.

[L. S.]

Signed, T. W. COLLINS,
Deputy Clerk.

JONATHAN STROUT } Commission from the District Court of the
vs. United States.
SHIP LOUISVILLE. }

To H. Lockett, Esq.

Testimony in this case will be taken before me at No. 60 Royal street, New Orleans, on Saturday, the 18th June, 1836, at twelve o'clock.

Signed, EDWARD RAWLE,
Judge of the City Court.

JONATHAN STROUT et als, }
vs. }
SHIP LOUISVILLE. }

Pursuant to a commission to me, Edward Rawle, an assistant judge of the city court of New Orleans, at my office, No. 60 Royal street, New Orleans, on Saturday, the eighteenth June, 1836, at twelve o'clock, came C. Vandyke, Edward Cornell, and Joseph Davis, who, sworn on the part of the libelled and the claimants, in a certain above entitled cause now pending in the district court of the United States for the eastern district of Louisiana, and C. Vandyke saith that he is master of the ship Sergeant. She was lying off the pilot houses at the time the accident of the Harriett happened. She was lying inside the bar at anchor, and saw the Louisville and Harriett distinctly with the naked eye. The Harriett was at anchor near the bar outside. She had gone over that afternoon. Other vessels went out to sea that afternoon, and witness thinks that the Harriett might have gone too, as there was wind enough when she crossed the bar and anchored. From where witness lay he should judge that the Harriett lay in the thoroughfare of vessels of going in or out. Deponent was lying at the mouth of the river on a former occasion. A similar accident happened to the Harriett, which was then lying close to the bar. She was then struck by the Hindostan. The Harriett was commanded then by Captain Strout, who now is captain of her.

When the Louisville weighed her anchor to come in there was a fresh wind and favorable for coming in. Witness had come in the day before with the same wind and drawing the same water. As the Louisville approached the bar the wind died away. Witness was watching her all the time ; there was a very strong current out of the Pass at the time. It was stronger than usual in consequence of a strong wind the night before from the south ; the current sent to the Southwest. In consequence of the lightness of the wind the Louisville drifted. Witness remarked to Capt. Hubbell, of the Lion, that he thought that the Louisville could not get over the bar in consequence of the wind having died away. Capt. Hubbell said the same thing.

Witness thinks that by any exercise of skill the Louisville could not have been prevented from drifting off. There was one vessel lying near the bar and one vessel on the bar or near, besides the Harriett. The Louisville must have been under the command of the pilot.

Cross-examined by Lockett.

Witness did not see the accident to the Harriett.

(Signed,) C. VANDYKE.

Also came Edward Cornell, who being sworn, saith that he is first mate of the ship Louisville, and was on board as such when the accident happened with the Harriett.

When the Louisville weighed and stood in there was a good fresh breeze; they could have carried royals. There was a pilot aboard at the time, whom they had taken in the night before. The Louisville stood in for the bar. The Harriett lay in front of the bar. The pilot remarked that they would be obliged to go on one side or the other close to the Harriett. He remarked this before they got under weigh. As they approached the bar the wind became lighter. Witness saw that the ship was nearing the Harriett. The pilot ordered them to let go the anchor. Witness jumped to the stopper and let it go, and paid out the chains as quick as they could. The pilot ordered them to take in sail, which was done as quick as they could. While they were taking in sail and paying out chain the Louisville was drifting westward. Witness thinks that there were eight or ten fathoms water. He thought that the anchor was on the ground, but discovered that it was afoul of the chain of the Harriett, which had a great scope out, and witness supposed that they aboard of the Harriett had paid out with the view of avoiding the Louisville. The chain of the Harriett was not forward of her, but off on the starboard bow. Witness does not think that the anchor of the Louisville would have got of the chain if the Harriett had been ahead of her. The current was pretty strong at the time, setting towards the Harriett. The wind got a little lighter, but with such a breeze, if they had been out and clear of the Harriett, they could have sailed. He thinks that if they had not got foul of the Harriett the pilot would have got to the bar. He thinks there is no doubt it could have been done. Every thing was done on board the Louisville, with the orders that they had from the pilot, to prevent the accident. The tonnage of the Louisville is over five hundred tons, as he is informed. There were twelve men and two boys aboard, besides officers and others, amounting to twenty-two in all. The Louisville is a packet vessel and carried passengers.

(Signed,) EDWARD CORNELL.

Came also Joseph Davis, who being sworn, said that he is second officer of the Louisville, and was aboard of her when the accident occurred to the Harriett. There was a pilot aboard at the time. When they first got under way there was a pretty strong breeze and favorable. When they got near the bar it became very light and hauled near by aft. The ship was under full sail at the time, but not studding sails and royals. The Harriett was lying about half a mile off the bar, right in the passage. They were obliged to run close to her. As the wind became lighter the current swept the Louisville towards the Harriett. The pilot ordered the anchor to be let go, which was done immediately. They had then completely lost command of the vessel; the Louisville was then drifted on to the Harriett. The anchor got foul of the Harriett's chain, and that brought the ships in contact. Every thing was done aboard the Louisville to prevent it. When the Harriett came down over the bar the same afternoon, there was a strong breeze, and she might have gone to sea. The pilot remarked that she was right in the thoroughfare.

Cross-examined by Lockett.

Witness is now the second mate of the Louisville and Edward Cornell is the chief mate.

(Signed,) JOSEPH DAVIS.

And testify that before me, Edward Rawle, judge as aforesaid, in the time and place set forth in the caption, Joseph Davis, Edward Cornell, and C. Vandyke, who were duly examined apart, on oath, touching and concerning matters and things in a cause now depending the court of the United States for the eastern district of Louisiana, wherein Jonathan Strout and others are libellants and the ship Louisville is libelled, and the examination of said witnesses were taken and reduced to writing by me, and signed by each of them in my presence, and their depositions and testimony are hereunto annexed and the commission.

Taken in presence of Lockett, Esq, for libellants, and Duncan, Esq. for libelled.

Witness my hand and private seal.

(Signed,) EDWARD RAWLE, *Judge*, [L. S.]

Costs	$7 00
Marsh. fees	
Notice	50
	$7 50 paid.

Addressed to the COURT OF THE UNITED STATES,
For the Eastern District of Louisiana.

STROUT & ALU
vs.
Ship LOUISVILLE.

Court of the United States, for the Eastern District of Louisiana, to E. Rawle, Esqr., or any other Associate Judge of the City Court of New Orleans.

Know ye, that reposing special trust and confidence in your integrity and ability, we hereby authorize and require you that you call, and cause to come before you, certain witnesses, and them duly examine on oath, touching and concerning certain matters and things in a cause now depending in the said court, wherein A. W. H. Clapp, Wyer & Noble, and J. Strout are libellants, and ship Louisville is libelled; and the same examinations so taken and reduced to writing, you certify under your hand and seal, and send enclosed to this court without delay, to be read in evidence on the trial of said cause, and send also this writ.

[L. S.] Witness the honorable Samuel H. Harper, judge of said court, at the city of New Orleans, this thirteenth day of June, Anno Domini 1836, and the 60th year of the Independence of the United States of America.

Notice.

A. W. H. CLAPP, WYERS & NOBLE,
vs.
Ship LOUISVILLE.
} Commission from the District Court of the United States.

To BEIN & COHEN, and Capt. PALMER.

Testimony in this case will be taken before me at No. 60, Royal street, New Orleans, on Tuesday, the 14th June, 1836, at 12 o'clock, M.

Signed, EDWARD RAWLE,
Judge of the City Court.

Marshall's Return on Back.

Served a true copy of the within personally to Mr. Cohen, one of the firm of Bein & Cohen, and served, also, a true copy to Capt. Palmer, by leaving the same, on board the ship Louisville, with a free person over the age of fourteen years.

Signed, ORAN HARKES,
Deputy Marshal.

New Orleans, June 13th, 1836.

CLAPP, WYERS, and others,
vs.
Ship LOUISVILLE.

Pursuant to a commission to me, Edward Rawle, an associate judge of the city court of New Orleans, at my office, No. 60, Royal street, New Orleans, on Tuesday, the fourteenth of June, 1836, at twelve o'clock, came Joseph S. Shuster, Richard Hartley, and B. A. Bukap, witnesses of lawful age, sworn and examined in the above entitled cause, now pending in the district court of the United States for eastern district of Louisiana. And the said Joseph S. Shuster sayeth that he was second mate of the ship Harriett, commanded by Capt. Strout, on the twenty-sixth of May, 1836; said ship was lying, on that day, at anchor near the mouth of the southwest pass of the Mississippi, outside the bar—she was lying on the western side of the bar. The light bore about north and by east, as witness thinks. The ship's sails were all furled. The ship Louisville was lying to the eastward of the Harriett, at anchor, with sails furled, as he thinks. The ship Louisville got under weigh, and stood down to southwest pass, with all sails on her—their tops' sails, and jib and spanker. When she got within a quarter of a mile of the Harriett, the Louisville let go her anchor. There was no range of cable overhauled; there was not more than enough cable to let the anchor out of sight, and he heard them overhauling the chain. The Louisville continued to drift down upon the Harriett; when she dropt her anchor, the sails were all set; when she came within reach, they aboard the Harriett fended off with spars, and aboard the Louisville, they then began to take in sail. Capt. Strout hailed, and told them to take in sail, as they were coming down upon them. The Louisville came afoul of the Harriet—aboard the Harriett, they bore her off, and then she came afoul again, and she was bore off again—aboard the Louisville, they tackct to heave the anchor, and it was then apeak, and no cable out aboard the Harriett, they then gave some chain to let her go eastern, so as to clear the Louisville, and Capt. Strout said to the Louisville to make sail aft, and bring her up. Instead of doing that, they set the fore-top-sail, and the ship paid off, and she came afoul of the Harriett across her bows. Aboard the Harriet, they continued to pay out cable to permit the vessel to go clear. The Louisville carried away the jib-boom, bowsprit, cut-heads, rail, swinging boom of the Harriett, and ripped up plank, and heaving, stove in the stancheons, damaged the end of the windlass, bruised the rail for and aft, chafed the forward mizen shroud very bad; she afterwards swung clear. They were obliged to cut away a fore-top-mast stay, to clear bowsprit. Every thing belonging to the bowsprit was carried away; they saved one-half of the jib-boom, the other half went.

There was plenty of room for Louisville to have passed to the eastward of the Harriett, and a good free wind. There was

no other vessel near. There were three vessels outside the bar; there was one on the bar. The Harriett was lying out of the usual track; she was lying where ships usually lie, in order to give room for other ships to come in. There were other ships and vessels which came down and went to sea, to the eastward of the Harriett. After the accident, and in consequence of it, the ship Harriet came back to New Orleans to refit; they could not go to sea as they were then. When the two ships came in contact the first time, aboard the Louisville there appeared to be a flustration, and they did not fend off; at the second time, they were so busy aboard the Harriett that witness cannot tell whether they fended off or not aboard the Louisville. There were aboard the Harriett six able seamen, one cook, and a man working his passage, two mates and the captain. The captain had paid advanced wages to the seamen before they sailed—sixteen dollars to each seamen. On the return of the vessel to New Orleans, the crew deserted the same night: same day of the arrival, the Harriett broke adrift and caught the main-top-sail yard of the ship Harriett into the main brace of the ship Malta, and carried away the bow chock of the Harriett, and the whole of the hawser went overboard, and the ship drifted down; one end of the hawser was ashore. The Harriett went to the ship yard of Hughes & Harrod.

The Harriett is now on the other side of the river, ready for sea. She has just been repaired. Witness have been to sea seven or eight years. He thinks that, considering the wind, and its being in the day time, the Louisville might have gone clear of the Harriett.

Cross-examined by Duncan.

Witness has been aboard the Harriett since the 9th May. The Harriett was towed down the river by steam. She arrived, on the 26th May, at the bar, in the afternoon, and went over immediately and came to anchor. No other vessel went over that evening, but a brig; she went out to sea. Another brig passed out and went to sea. He thinks both brigs stood to the southwards and westward. The next morning, the wind having changed, the ship Franklin crossed the bar, and several other vessels went to sea. The accident to the Harriett happened about an hour and a half after she crossed the bar. The pilot had been dismissed. On her voyage, in and about the same place, the Harriett met with a similar accident, as witness was informed by the mate.

The windlass of the Harriett is forward of the foremast. It was in the morning before breakfast; after the accident, they cut away the bowsprit. It was cut away for the security of the ship, as there was a chopping sea, and the ship was chafed and injured by the bowsprit. The wind was then N. west. The Harriett is a ship of three hundred tons. The ships which came down, all went to the eastward of the Harriett.

Signed, JOSEPH F. SHUSTER.

Richard Hartley sworn.

He is captain of ship Andrew Scott. The Andrew Scott lay about a mile and a half to the southward and westward of the bar. The Harriett lay perhaps two miles eastern of her. She came to anchor that day about 12 o'clock, or between that time and two. The Louisville lay to the southward and eastward of the Harriett five or six miles. He took no notice of her until she was foul of the Harriett. The wind at that time was south southeast. When witness first observed the Louisville, she had top-sails and main-top-gallant-sail set; the fore-top-gallant-sail was clued down; she had an anchor down at the time. Witness saw her with a glass. Witness saw them clear her once, and then she ranged across the Harriett's bows. From the situation of the vessel, and from the wind, witness thinks that the accident might have been prevented if measures had been taken in time aboard the Louisville. It is difficult to cross the bar with a free wind on account of the difficulty of steering. Witness had made the attempt with same wind four or five days before, and he drifted off; the wind was south south-east. When the accident took place, the wind was fresh. There was plenty of room for the Louisville to have anchored to the eastward of the Harriett. Witness thinks that the accident was entirely owing to the negligence of the pilot, if there was one on board.

Cross-examined by Duncan.

This is his first visit to New Orleans. At the time of the accident, there was a fresh breeze, and a strong current settling towards the Harriett, which was to the westward. He has been informed that, at this season of the year, the current sets strong to the west. The night previous, witness made the attempt and struck the bar, and the vessel, the Andrew Scott, drifted off to the westward. This vessel steered well until he struck the bar. The wind then was south southeast or southeast, and blowing pretty fresh.

The Harriet was towed out, and the steamboat left her abreast of the Scott. While he was lying there, which was eight days, all the vessels that came out passed to the eastward.

Signed, RICHARD F. C. HARTLEY.

B. A. Bukap sworn.

Witness was a passenger aboard the Andrew Scott. The Harriett came down and anchored about two miles eastern of the Scott, about south and by west. The Louisville was about seven miles off, getting under weigh. When she got under weigh, she proceeded with a strong breeze from southeast, with full sail and under command; when she approached the Harriett, she hauled her

courses up, and commenced driving up the fore and mizen-top-gallant-sails; when she shot ahead of the Harriett, witness heard the chain run to let go the anchor. At the same time, she had all her top-sails set; they then began to clue up the sails aboard the Louisville. Witness then observed to Capt. Hartley, those ships are going to bull one another. With the glass, witness saw some men aboard the Harriett bearing off, and he heard the chain aboard of her was payed away the same time. The ships then came together again, and they again departed. In both instances, the larboard bow of the Louisville came against the starboard bow of the Harriett. After they separated the second time, they commenced hoisting the fore-top-sail of the Louisville, and part of the jib, and then the Louisville fell across the bows of the Harriett, and witness then heard the crack of the bowsprit, and saw it lying alongside.

Witness is a sailor by profession; has been to sea since 1805; he has commanded packets to Havre and Vera Cruz.

Witness says, as a seaman, that, considering the wind and the situation of the two vessels, the accident ought not to have taken place, and might have been avoided by those aboard the Louisville. If, even after they were in contact, the Louisville had paid out her chain, she would have gone clear.

Cross-examined by Duncan.

Witness has been at New Orleans in command of vessels. The Andrew Scott, aboard of which witness was, was about two miles from the Harriett when the accident took place. At the second time the Louisville was foul of the Harriett, they set the jib and fore-top-mast stay-sail aboard the Harriett.

Vessels coming in with a light wind, are likely to be drifted off to the westward; that at the time of the accident, there was a strong breeze.

Signed, B. A. BUKUP.

I certify that by virtue of the annexed commission, came before me at the time and place set forth in the caption, Joseph F. Shuster, Richard F. C. Hartley, and B. A. Bukup, who were duly examined apart on oath, before me, touching and concerning matters and things in a cause now depending in the court of the United States for the eastern district of Louisiana, wherein A. W. H. Clapp, Wyers & Noble, and J. Strout are plaintiffs and libellants, and the ship Louisville is libelled, and the examination of said witnesses were taken and reduced to writing by me, and signed by each of the said witnesses in my presence as is hereinbefore set forth, written and annexed.

Taken in presence of Lockett, Esq. for libellants, and Duncan, Esq. for the libelled and claimants.

Witness my hand and private seal.

Signed EDWARD RAWLE, *Judge.* [L. S.]

Costs - - - - - -	$10 00
Marshal's fees, two notices - - -	1 00
	$11 00 paid.

Addressed—To the court of the United States for the eastern district of Louisiana.

CLAPP, WYERS, *and als*, *vs.* SHIP LOUISVILLE. } Costs $11 00—Paid.

Protest.

UNITED STATES OF AMERICA, *State of Louisiana, ss.*

By this public instrument be it known to all to whom the same doth or may concern, that I, William Young Lewis, public notary in and for the city of New Orleans, by letters patent under the great seal of this State, duly commissioned and sworn, do hereby certify that the annexed documents number from A to Q, relate to the general and partial average and the disbursements of the ship Harriet, Capt. Strout, hence to London, which said vessel put back for repairs in consequence of having been run into by the ship Louisville, of New York, all of which bills the said master declares upon oath are just and true, and that the amount thereof have been duly paid without deduction or diminution, who hereto signs his name.

Signed JON'N STROUT.

[L. S.] In testimony whereof, I, the said notary have subscribed these presents, and hereunto affixed my seal of office, the eleventh of June, in the year one thousand eight hundred and thirty-six.

Signed W. Y. LEWIS,
Notary Public.

Bills.

Q.

Ship Harriet Capt. Strout, to William Y. Lewis,

1836. June 11,	Nothing extending and copy protest -	$12 00
	Extra copy for London - - -	5 00
	Stating claims - - - -	10 00
	Two certificates - - -	6 00
		$33 00

O.

Ship Harriet and owners, to Tow-boat Porpoise, Dr.

For towage from sea to city	G-A.	- - -	$250 00
Moving to shipyard	X	- - -	15 00
Towage to sea	G-A.	- - -	100 00
			$365 00

Duplicate. New Orleans, 10th June, 1836. Received payment.
Signed F. HERMAN.
Signed JON'N STROUT, *Agent.*

SOUTHWEST PASS, *May 28th*, 1836.

G-A. Ship Harriett and owners. Pay Mr. Wm. Gates for pilotage ship inwards, twenty-five dollars.
Signed JON'N STROUT.

N.

SOUTHWEST PASS, *May 28th*, 1836.

Ship Harriett and owners, to Garrison's Branch, Dr.
To inward pilotage of said ship after having been run into outside the bar, per captain's order - - $25 00

Received payment. New Orleans, 6th May, 1836.
For RICHARD GARRISSON.
Signed RICHARD L. ROBERTSON.

M.

Ship Harriett and owners, Dr. to James Aikman.

To 2 weeks boarding chief mate,	$4, one	- -	$8 00
2 " " second "	$4 "	-	8 00
			$16 00

Received payment
Signed JAMES AIKMAN.
New Orleans, 11th June, 1836.

L.

Capt. Strout, to Rawland Reese, Dr.
For 2 weeks board at $5 - - - - $10 00

New Orleans, June 11th, 1836. Received payment.
Signed ROLAND RIS.

K.

NEW ORLEANS, 10*th June*, 1836.

Ship Harriett, Jon'n Strout, Captain, and owners, to Ralph Jacobs & Co. Dr.

Advance crew per articles - - - -	$128 00	Ship.
Shipping 8 men at $2 each - - - -	16 00	
List of crew and articles - - - -	3 50	
	$147 50	

Duplicate.

☞Payable when the vessel leaves the levee.

☞All seamen shipped at our office are guaranteed to sea, unavoidable accidents excepted. Approved.

Signed JON'N STROUT.

Received payment.

Signed R. JACOBS & CO.

The undersigned at the request of Francis Quarles, agent for the insurers, has examined the rigging cut and injured belonging to ship Harriett of Portland, together with the sails, damage sustained by Louisville coming in contact with said ship, and estimate the value of the damaged rigging saved, at twenty-five dollars, jib, eight dollars, foretopmast staysail, seven dollars. New Orleans, June 11, 1836. Fees $5.

Signed B. HARROD.

J.

NEW ORLEANS, *June 8th*, 1836.

Ship Harriett and owners, to Charles P. Knight, Dr.

To 2¼ bolts of half duck at $13 - - -	$32 50
1 bolt of heavy duck - - - -	21 00
50 lb. rope at 18 c. - - - - -	9 00
3¼ lbs twine at 62½ c. - - - -	2 18
6 thimbles at 20 c. - - - - -	1 20
working 3½ bolts at 4 50 - - - -	15 75
	$81 63

Received payment.

Signed CHAS. P. KNIGHT.

Approved:

Signed JON'N STROUT.

I.

NEW ORLEANS, *June 11th*, 1836.

Ship Harriett and owners, to Messrs. Price & Bornant, Dr.

To 2 thimbles and strop to martingale	$1 50
6 nails	37½
repairing 9 bolts	1 12½
25 lb. of bolts for breast hook at 15	3 75
1 pair of hinges	1 50
repairing cranes	4 00
9 lb of anchorstock hoop at 13 c.	1 62
3 do do do ripe	1 50
1 eye bolt	10 50
Received payment.	$25 87

Signed PRICE & BORNANT.

H.

Estimated cost for ship Harriett of bullet head	$30 00	
Painting and gilding	10 00	$40 00
Frail board	10 00	
Painting and gilding do	5 00	15 00
		$55 00

New Orleans, June 10th, 1836.

Signed HARROD & HUGHES.

G.

NEW ORLEANS, *9th June* 1836.

Ship Harriet and owners, bought of Layton & Co., No. 53 Old Levee street.

1 coil 5½ in. tarred rope	625 lbs.		
1 " 2 " " "	73		
1 " 2½ " " "	105½		
3 spun yarn " "	43		
1 part coil rope	21		G–A.
1 coil 3½ in.	177	1,044½	$130 56

Received payment.

Approved:

Signed LAYTON & CO.

F.

NEW ORLEANS, *June 9th*, 1836.

Ship Harriet and owners, to Messrs. Price & Bornand, Dr.

To 1 hook, ring, and thimble	$2 00
1 eye bolt	75
repairing a chain	37½

15 lbs. of eye bolts at 18 - - -	2 70		
80 lbs. of chain for bobstay at 15 - -	12 00		
59 lbs. of bolts at 15 - - - -	8 85		
25 lbs of keys and plates for windlass at 25 -	6 25		
4 large nails - - - - -	25		
20 lbs. of dead eye, strap, and eye bolts -	4 00		
strap and nails on cap for martingal - -	1 25		
martingal, hook and nails, and hoop - -	5 00		
repairing stantions - - - -	50		
7 stag nails - - - - -	1 75		
24 nails - - - - - -	96	$45	67½
lengthening an augur - - - -	37½		
72 lbs. hoops on bowsprit at 25 - -	18 00		
4 bolts to do - - - -	1 00		
1 sheave pin - - - - -	25		
5 rings - - - - -	20		
6 eye bolts - - - - -	1 50		
4 hooks and thimbles - - -	4 00	$26	28½
Received payment		$71	96

Signed PRICE & BORNARD.

Approved.

Signed JON'N STROUT.

E.

Ship Harriett and Owners, to James Davis, Dr.

June, 1836, To 4 8 inch dead eyes, for both stays at 12½	$4	00
To 2 8 do do for bowsprit shrouds do	2	00
To 1 7 do bulls eye at 12½ - -		88
To 1 double and 1 single 9 inch block for jib stay at 18½ - - - - -	4	86
To 2 7 inch blocks for jib yurges at 12½ -	1	75
To 2 7 do double blocks for yurges at 12½	2	50
To 2 6 do double and 6 inch single blocks for martingale guys at 12½ - -	4	50
To 2 5 inch blocks for jib and stay-sail sheets at 12½ - - - - -	1	25
To 2 shuves jun for jib boom - -		60
To 1 doz. of jib hanks at $1 - -	1	00
	$24	34

New Orleans, June 6, 1836, received payment,

Signed JAMES DAVIS,

Approved, Signed JNO. STROUT.

D.

Ship Harriett and Owners, to Harrod & Hughes, Dr.

June, 1836,	For 87 cubic feet timber for stations cap bus David deets chocks $1 - - -	$87 00
	For 686 feet oak plank for rail strings, mouldings, and plank shear at 6¼ - -	42 87
	For 30 feet locust for stantions and martangales at 62½ - - - -	20 00
	For 1 white oak knee for head rail - -	3 00
	For 2 do for cat heads $8 50 - -	17 00
	For 1 do for head to bowsprit - -	8 50
	For 1 live oak for lauing - - -	4 00
	For 18 y. pine appear head rail at 4 -	72
	For 10 w. p. boards for mould 3½ - -	35
	For 1 bowsprit 32 feet at $3 - -	96 00
	For 1 jib boom 36 feet at 75 c. - -	27 00
	For 1 swingging boom 27 feet at 37½ -	10 12
	For 20 cubic feet W. pine for water way a $1	20 00
	For 114 lbs. wro't spikes at 16 c. - -	18 24
	For 18 lbs. cut spikes at 10 c. - -	1 80
	For 10 lbs. sheet lead at 12½ - -	1 25
	For 90 lbs. oakum at 10 c. - - -	9 00
	For 1 bbl. pitch $4 50—mops at $2 - -	6 50
	For 76½ days carpenters at $3 25 - -	248 62
	For 26¾ days caulkers do - -	86 94
	For 10¾ days sawyers at $2 75 - -	29 56
	Superintendance - - - -	35 00
		$773 48
	Paid scraping - - - -	20 00
	Paid 5 men mooring ship to yard - -	8 50
		$801 98

New Orleans, June 11, 1836, received payment,
Signed HARROD & HUGHES.
Approved, Signed JON'N. STROUT.

C.

Ship Harriet and Owners, to Cyrus Wittington, Dr.

June 3, 1836,	To myself and two men one day fitting F. T. M. - - - - -	$9 75
4,	To myself and two men fitting rigging to jib	9 75
6,	To myself and two men fitting bowsprit rigging - - - - -	9 75

7,	To myself and two men fitting martingal	9 75
8,	To myself and two men fitting mizin rigging	9 75
9,	To setting bowsprit—setting up rigging 4 men	13 00
10,	To myself and two men setting up rigging for $3 25	9 75
		$71 50

Received payment,
Signed CYRUS WELLINGTON.
June 10, 1836, Approved,
Signed JON'N. STROUT.

B.

Ship Harriett and Owners, to John Brunet, Dr.

For 276 feet cypress board at 5 c.	$13 80
For 10 lbs. cut nails at 10 c.	1 00
For 8 days labor $3 25	26 00
	$40 80

Received payment,
Signed JOHN BRUNET,
Approved, Signed JON'N. STROUT.

A.

Ship Harriett and Owners, to Rosindale & Graves, Dr.

To 8 lbs. verdigries at 50 c.	$4 00
To 4 kegs of white lead $3 25	13 00
To 1 keg of black lead	3 00
To 1 gallon spt's turpintine	1 00
To 1 gallon oil $1 75	10 50
To 2 lbs. of lithurge 19 c.	38
To 8 days labor at $3 25 per day	26 00
	$57 88

New Orleans, June 11, 1836, received payment,
Signed ROSINDALE & GRAVES,
Approved, Signed J. STROUT.

Bills of ship Harriett, a part of whieh comprises the ships disbursements, the general average and the partial average claims.

A.—Paid Rosindal & Graves, painters' bill - -		$57 88
B.—Paid John Brunett, for boards and bill - -		40 80
C.—Paid C. Wellington, riggers' bill - -		71 50
D.—Paid Harrod & Hughes, ship carpenters' bill -		801 98
E.—Paid James Davy, block makers' bill - -		24 34
F.—Paid Price & Blonard, blacksmiths' bill - -		71 96
G.—Paid Taylor & Co., rop. and bill gpt. - -		130 56
H.—Paid estimate cost head &c., and estimate - -		55 00
I.—Paid Price & Bernard, blacksmiths' second bill -		15 87
J.—Paid Charles P. Knight, sail makers' bill - -		81 63
K.—Paid advance to crew ship disburse per bill - -		147 50
L.—Paid captains board do do - -		10 00
M.—Paid mates board do do - -		16 00
N.—Paid pilotage ship inward G. A. - - -		25 00
O.—Paid towing ship to ship-yard - - -		15 00
Paid towing from sea and back G. A. - -		350 00
Paid pilotage outward G. A. - - -		25 00
P.—Paid portwardens survey - - - -		10 50
Q.—Paid notary's bill $25, and $8 G. A. - -		33 00
		$1,983 52
Agents' commission 5 per cent. - - -		99 17
		$2,082 69
Discount on bill exchange, reimbursements 1½ per cent. -		31 71
		$2,114 40
And omitted pd. 4th March, to get amber -	$8 00	
To maps - - - - -	7 50	
	15 50	
Add commission 5 per cent. - - -	77	
Add discount bill - - - -	26	
		16 53
		$2,130 93

New Orleans, 11th June, 1836.
Signed W. Y. LEWIS, *Not. Pub.*

PORT WARDEN'S OFFICE,
New Orleans, 30 *May*, 1836.

The subscribers, wardens of this port, having been thereto required by Captain Strout, did repair on board the ship Harriett, put back in distress, and assisted by Mr. John Hughes, ship carpenter, we repaired on board the ship Harriett, on the opposite side the river, and surveyed her condition, found three bulwark stantions on the

larboard bow, five bulwark stantions on the starboard bow, 20 feet of main rail and plank shar and bulwark carried away and sprung on each bow, and both cat-heads carried away, the windlass biltz and pull biltz started, both ends of the windlass started, the upper string outside and two mouldings, say 20 feet of each, started and split, the black streak on the bendz damaged, all on the starboard bow, the anchor stock carried away, the same quantity of moulding string and streak on the larboard side split and started, two bulwark stantions and 30 feet of main rail sprung in the larboard waste, one lower studding sail swinging boom carried away, and bentz, both swinging boom cranes, one of the mizen shrouds stranted, the starboard davits split, and the main channel shrouding on the larboard side, the bowsprit carried away outside the night heads and lost with the wreck, the bob-stays, jib-boom, and all the gear belonging thereto, except the bowsprit shrouds, which were saved but badly chafed; the billet head, head boards and head rails and timbers, all carried away. The captain reports that to clear the wreck he was obliged to cut away the topmast and topgallant stays, and that the jib and foretopmast staysails where both chafed badly. The captain further reports that he was obliged to cut up and use for securing the anchor about 60 fathoms of 3 1-2 rope; that both ring stoppers were parted, say 16 fathoms of 3 1-2 inch rope, the ship having received so severe a shock in found the bows, ordered the seams in her bows to be tried, and where necessary, caulked and the damages to be repaired. The captain reports that whilst lying to an anchor off the bar of the South West Pass of the river Mississippi, the light house bearing north by east, on the 26 instant, he was run foul of by the ship Louisville, of New Orleans, and that all the within mentioned damages were occasioned thereby.

All which therefore, according to the powers vested by law in the master and wardens of this port, we do hereby certify and grant this certificate.

Signed JAMES NICHOLSON.
" ROBERT SPEDDEN,
" JH. DE MABY,
" J. M. CASTANDE.

I certify the foregoing to be a true copy of the record in this office.

Signed L. P. BUREAU, *Clerk.*

Survey	$10 00
Ferry	50
	$10 50

Protest.

STATE OF LOUISIANA, *City of New Orleans.*

By this public instrument of protest, be it known, that on this thirteenth day of May, eighteen hundred and thirty-six, before me, William Young Lewis, notary public in and for the city of New Orleans, duly commissioned and sworn.

Personally came and appeared Jonathan Strout, master of the ship called the Harriett, of Portland, in Maine, who declared that he sailed from New Orleans on the twenty-fifth day of May, instant, bound for the port of London; that whilst anchored outside of the bar of the South West Pass of the river Mississippi, with the wind at S. E., the ship Louisville of New York, run foul of him under full sail, and damaged his ship so much that he was compelled to return to the aforesaid port of New Orleans for repairs, and required me, notary, to make record of the same, intending at more leisure to detail particulars.

And this day again appeared the said master, together with Sewell Strout, mate, and Joseph F. Schuster, second mate, all of, and belonging to said vessel, who being duly sworn to declare the truth, did depose and say that when said vessel departed as aforesaid, she was tight and strong, well manned and provided.

That on the twenty-fifth, at six o'clock, P. M., took a stern tow boat and proceeded down the river, and at 8 o'clock, P. M., came to anchor about twenty miles below the city, the weather being thick; that on the 26th they had fresh breezes from the S. E., with rain; at 5 o'clock, A. M., they got under weigh, and proceeded down the river; at 4 o'clock, P. M., passed the bar of the S. W. Pass, and came to anchor in 7 fathoms water, with the wind from the eastward, and a heavy sea running. At 6 o'clock, P. M., the ship Louisville, of New York, came in from the eastward under full sail, and came to anchor with a small scope of chain, and drifted foul of the larbord bow of the Harriett, whose helm was hard to starboard and the jib and foretopmast staysail set to shear clear, but it was all to no purpose, the Louisville took the Harriett on her starboard bow with great force, they succeeded however in bearing her off without much damage, and she came foul of them the second time, and they bore her off again with equal success, but instead of setting after sail to bring the ship too, clear of them, they hoisted their foretopsail and paid their vessel off across the bow of the Harriett, which carried away her jib boom, bow sprit, royal mast, steering sail boom, cat-heads, anchors and head, broke in the rail and bidworks, stanchions, waterways, chafed the bow, carried away a part of the jib boom and bow sprit rigging, injured the windlass, and then swung round upon the larboard side, chafed the rigging fore and aft, and obliged them to cut away one of the topmast stays from the bowsprit to set up the night heads for the security of the mast, also carried away the swinging booms and crains, with considerable other damage; the wind blowing at N. W., with a heavy sea, the

S. W. Pass light bearing N. by E., and finding that the bowsprit chafed the bow considerably, they deemed it advisable to cut away the wreck; that on the 27th, they had heavy gales from the N. W., with a heavy sea; that they found the ship much more injured than they supposed her to be; they discovered, upon further examination, that her plank shear was off, the bows badly bruised, the jib and foretopmast staysail badly chafed, the rigging and larboard rails amidships chafed and split, and the stock of the starboard anchor broken. At seven o'clock, A. M., a pilot came on board, and they set the colors in distress; at 9 o'clock. A. M. the pilot left them to procure a steamboat to take the ship back to New Orleans; sent down the foretopgallant mast and yard for the safety of the other masts.

That the 28th commenced with heavy gales from the N. W. with a heavy sea; that at 7 o'clock, A. M., the steamboat Porpoise came out to their assistance, but the sea was so high she was compelled to return; at 9 o'clock, A. M. the pilot returned to the ship, and at half past 10 o'clock, A. M., the steamboat came out again and towed the ship into the river and proceeded for the port of New Orleans, being obliged to employ four men from the shore to get the ship's anchor, and at 9 o'clock, A. M., of the thirtieth they arrived at the port of New Orleans as aforesaid, and came to at the ship yard. At 11 o'clock, A. M., in sheering the ship off to haul ahead, the mainsail yard caught another ship's main brace and they took the current, when the ship payed off carried away the bow cheek and went adrift; let go an anchor and was brought up at the lower Cotton Press, and was towed back again by the Porpoise; employed six men to get the anchor; that the necessary surveys were called and the carpenters commenced repairing the vessel.

That on the 31st, all hands, including the cook, ran away, and have not been heard of since.

And therefore these said appearers, and especially the said master, did protest, and with them I, notary, at their request, do most solemnly and publicly protest against the winds and the waves and the dangers of the sea generally, but more especially against the disasters herein set forth, as the cause of all the loss and damage in the premises, and that no fault, negligence, or mismanagement is or ought to be ascribed to these said appearers, or to any part of said ship's company.

Done and protested at New Orleans, this sixth day of June, eighteen hundred and thirty-six.

The protestors hereunto their names with said notary.

Signed JONATHAN STROUT,
SEWELL STROUT,
JOSEPH F. SCHUSTER.

Signed W. Y. LEWIS, *Not. Pub.*

I hereby certify that the foregoing is a true copy of the original extract (extract) upon the current records of my office.

In witness whereof I grant these presents under my hand
[L. S.] and seal at New Orleans, this 11th day of June, 1836.

W. Y. LEWIS, *Not. Pub.*

Protest.

STATE OF LOUISIANA, *City of New Orleans.*

JUNE 6TH, 1836.

By this public instrument of protest, be it known, that on this thirtieth day of May, eighteen hundred and thirty-six, before me, William Young Lewis, notary public in and for the city of New Orleans, duly commissioned and sworn.

Personally came and appeared Jonathan Strout, master of the ship called the Harriett, of Portland, in Maine, who declared that he sailed from New Orleans on the twenty-fifth day of May, instant, bound for the port of London; that whilst anchored outside the bar of the South West Pass of the river Mississippi, with the wind at S. E., the ship Louisville, of New York, ran foul of him under full sail, and damaged the ship so much that he was compelled to return to the aforesaid port of New Orleans for repairs, and required me, notary, to make record of the same, intending at more leisure to detail particulars.

And this day again appeared the said master together with Sewell Strout mate, and Joseph F. Schuster, second mate, all of and belonging to said vessel, who being duly sworn to declare the truth did depose and say, that when said vessel departed as aforesaid, she was tight and strong, well manned an provided: That on the twenty-fifth, at six o'clock P. M. took a steam tow boat, and proceeded down the river, and at eight o'clock P. M. came to anchor about twenty miles below the city, the weather being thick.

That on the twenty-sixth they had fresh breezes from the SE with rain; at five o'clock A. M. they got under way and proceeded down the river. At four o'clock P. M. passed the bar of the SW pass and came to anchor in seven fathoms water with the wind from the eastward and a heavy sea running. At six o'clock P. M. the ship Louisville of New York came in from the eastward under full sail and came to anchor with a small scope of chain and drifted foul of the starboard bow of the Harriett, whose helm was hard to starboard and the jib and fore top mast stay sails set to stear clear, but it was all to no purpose, the Louisville took the Harriett on her starboard bow with great force, they succeeded however in bearing her off without much damage, and she came foul of them the second time, and they bore her off again with equal success but instead of setting after sail to bring the ship too, clear of them they hoisted there foretop sail and paid their vessel off across the bow of the Harriett which carried away her jib boom, bowsprit,

royal mast, steering sail booms, cat heads, anchors and head, broke in the real and bulwarks, stanchions, waterways, chafed the bow, carried away a part of the jib boom, and bowsprit rigging, injured the windlass and than swung round upou the larboard side, chafed the rigging fore and aft and obliged them to cut away one of the topmast stays from the bowsprit to set up the nights heads for the security of the masts, also carried away the swinging booms and chains with considerable other damage, the wind blowing at NW with a heavy sea, the SW pass light bearing N by E, and finding that the bowsprit chafed the bow considerably they deemed it advisable to cut away the wreck.

That on the twenty-seventh they had heavy gales from the NW. with a heavy sea that they found the ship much more injured that they supposed her to be, they discovered upon further examination that her plank shear was off, the bows badly bruised, the jib and foretopmast stay sail badly chafed, the rigging and larboard rails amid ships chafed and split, and the stock of the starboard anchor broken; at seven o'clock A. M. a pilot came on board and they set the colours in distress; at nine o'clock A. M. the pilot left them to procure a steamboat to take the ship back to New Orleans, sent down the fore top gallant mast and yard for the safety of the other masts.— That on the twenty-eighth, commenced with heavy gales from the NW. with a heavy sea, that at seven o'clock A. M. the steamboat Porpoise came out to their assistance, but the sea was so high, she was compelled to return; at nine o'clock A. M. the pilot returned to the ship and at half past ten o'clock A. M. the steamboat came out again and towed the ship into the river and proceeded for the port of New Orleans being obliged to employ four men from the shore to yet the ships anchor, and at nine o'clock A. M. of the thirtieth they arrived at New Orleans as aforesaid and came to at the ship yard at eleven o'clock A. M.; in shoveing the ship off to haid ahead, the main top yard caught another ship's mainbrace and they took the current; when the ship payed off carried away the bow chock and went adrift, let go an anchor and was brought up at the lower Cotton Press and was towed back again by the Porpoise; employed six men to get to anchor, that the necessary surveys were called and the carpenters commenced repairing the vessel.

That on the thirty-first all hands, including the cook, ran away, and have not been heard of since.

And therefore these said appearers, and especially the said master, did protest, and with them I, notary, at their request, do most solemnly and publicly protest against the winds and the waves, and the dangers of the sea generally, but more especially against the disasters herein set forth as the cause of all the loss and damage in the premises, and that no fault, negligence or mismanagement is, or ought to be ascribed to these said appearers, or to any part of said ship's company.

Done and protested at New Orleans, this sixth day of June, eighteen hundred and thirty-six. The protestors hereunto signing their names with said notary.

Signed, JNO. STROUT,
SEWELL STROUT,
JOSEPH F. SCHUSTER.

Signed, W. Y. LEWIS,
Notary Public.

I hereby certify that the foregoing to be a true copy of the original extant upon the current register.

In witness whereof I grant the presents under my hand [L. S.] and seal, at New Orleans, this 21st day of December, 1836.

Signed, W. Y. LEWIS,
Notary Public.

Testimony.

UNITED STATES DISTRICT COURT,
Eastern District of Louisiana.

Tuesday, 23d January, 1838. Present, Hon. P. K. Lawrence.

JON'N STROUT *et als.*
vs.
SHIP LOUISVILLE.

Testimony taken in open court, on trial of said cause, the 23d January, 1838.

I. T. Garvin being duly sworn: that since the year 1817 he has been master of a packet ship sailing most of the time between this port and Philadelphia. The entrances of the Passes at the mouth of the Mississippi are very intricate and difficult on account of the currents and counter currents. Witness has been for eight years acquainted with Captain Vandyke, whose testimony has been taken in this case. That Capt. V. is a man of respectability, and an able captain. As the vessels approach the bar and the water shoals, the vessels generally become unmanageable, particularly when the wind dies away; when the water is shoal the under-to has a great effect on the vessel, and frequently with the greatest efforts a vessel cannot be steered. There is one flood tide every twenty-four hours on the bar. The consequence of the flood tide and the current running over is what forms the under-to, two currents on the ship, acting at the same time, makes it difficult to steer her. From the position described as being that of the Harriett, by Capt. Hartley, witness doubts whether an anchor would hold there. The bottom is very steep in that place, and between there and the mouth of the Pass. That about 300 yards from the stake on the bar, there is se-

ven fathom water. Vessels never anchor so far off as the Harriett was lying; a chain can be heard afar off; its sound can be heard better than any thing else. When the wind is fresh a chain can be heard a mile off. Witness expects to leave the port in about three weeks.

Cross-examined.

With a good strong breeze and seven fathoms water a vessel will steer over the bar; when a ship goes six or seven knots an hour it will steer over, but when they are going only three or four knots an hour they will not steer well. When witness goes out of the river with his ship, he sometimes makes the steamer take her round to the eastward going out, and their anchors outside the bar, in shoal water, in such a position as to be out of the way of vessels coming out or in, and so as to be able to get under way whenever he thinks proper.

Re-examined.

In the position described to be that of the Harriett, by Captain Hartley, there is generally 25 fathom water. It is not usual except in a case of necessity for vessels to anchor where the Harriett is described to have been.

John Bunker being duly sworn deposes and says that he has been master of one of the regular packets sailing between this port and New York for the last seven years. Witness is familiar with the Passes at the mouth of the River Mississippi, and witness confirms the opinion of Captain Garvin in relation to the difficulties at the Passes, and the under-to existing there. The Harriett could not have laid in the position as described in the evidence of Captain Hartley, for there is not in that place the proper depth of water; if she was there she would have been in the thoroughfare of vessels coming in and out, according to the position described by Shuster; considering the bearing and the depth of the water, the Harriett must have been very near the bar, and in the thoroughfare of vessels coming in and going out.

The testimony is here closed.

Signed, T. W. COLLINS,
Deputy Clerk.

And afterwards, on the 2d February, 1838, the following petition of appeal was filed, to wit:

In the matter of Jon'n Strout and others, *vs.* Ship Louisville. } No. 3,811. In the District Court of the United States in and for the Eastern District of Louisiana.

The petition of James Foster, Senr., James Foster, Junr., Amos Palmer, and Alexander S. Palmer, claimants and owners of the ship Louisville, libelled herein, respectfully shows:

That petitioners are dissatisfied with the decree rendered herein on the twenty-fifth day of January, 1838, and believing there is

error therein, they pray and appeal therefrom to the honorable the circuit of the United States, in and for the ninth circuit, holding sessions at the city of New Orleans, in the eastern district of Louisiana, in said circuit, and tendering here bond and security, that pray that execution of said decree may be stayed. And as in duty bound, &c.

Signed, L. C. DUNCAN,
Proctor of Claimants.

Judge's Order.

Let an appeal be allowed, returnable into the circuit court, as within prayed for, on the first day of the next term of said court, on the claimants and petitioners giving bond and security as the law directs, with John D. Bein, their security, in the sum of four thousand and fifty dollars. And in the meantime let execution for the decree rendered herein, on the 25th January, 1838, be stayed.

New Orleans, 2d February, 1838.

Signed, P. K. LAWRENCE,
Judge United States.

Bond of Appeal.

And on the same day the following Bond of Appeal was filed, to wit:

We, James Foster, Sen., James Foster, Jr., Amos Palmer, Alexander S. Palmer, owners of the ship Louisville, and John D. Bein, their security, are held and firmly bound unto A. W. H. Clapp, Wyer & Noble, and Jonathan Strout, their heirs, administrators, in the sum of four thousand and fifty dollars, for the payment of which, we bind ourselves, our heirs and administrators, firmly by these presents. Dated the second day of February, eighteen hundred and thirty-eight.

Whereas, the above bounded James Foster, Senr., James Foster, Jr., Amos Palmer, and Alexander S. Palmer, have filed their petition of appeal, praying to appeal in the circuit court, for the ninth circuit, from a decree rendered in the suit of Jonathan Strout *et als, vs.* Ship Louisville.

Now the condition of above obligation is such, that if the above bounded, James Foster, Senr., James Foster, Jr., Amos Palmer, and Alexander S. Palmer shall prosecute their said appeal in the circuit court for the ninth circuit, and shall pay and perform such judgment and decree that may be rendered thereon against him, then, and in such case this obligation to be void, or else remain in full force and virtue.

Signed, ALEXR. S. PALMER,
For self and other owners of ship Louisville.

Signed, JOHN D. BEIN. [L. S.]

Signed, sealed, and delivered, in presence of

Signed, L. C. DUNCAN.

CLERK'S OFFICE, UNITED STATES DISTRICT COURT,

Eastern District of Louisiana.

I, Duncan N. Hennen, clerk of the said court, do hereby certify that the foregoing pages contain a true copy of the proceedings, process, pleadings, documents and evidence, and other matters on file and of record in a certain cause, wherein Jonathan Strout *et als*, were plaintiffs or libellants, and the ship Louisville was libelled, so fully as appears by the record remaining in this office, said record being the No. 3811 of the docket of said court.

Witness my hand and the seal of the Court, this 1st day of
[L. S.] May, 1838, and 62d of the Independence of the United States of America.

Signed, DUNCAN N. HENNEN,
Clerk.

I, P. K. Lawrence, Judge of the United States District Court, Eastern District of Louisiana, do hereby certify that Duncan N. Hennen, who subscribed the above certificate, is the clerk of the said court, and that all due faith and credit are and ought to be given to his attestations as such, and that the above attestation is in due form of law.

Given under my hand and seal, this day of

Writ of Appeal.

UNITED STATES OF AMERICA, *ss.*

The President of the United States of America to the Judge of the District Court of the United States in and for the Eastern District of Louisiana, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea, which is in the said court before you, between Jonathan Strout, A. W. H. Clapp, and Wyer and Noble, libellants, and the ship Louisville, her tackle, apparel, and furniture, libelled, and James Foster, Sen., James Foster, Jun., Amos Palmer, and Alexander S. Palmer, claimants, a manifest error hath happened, to the great damage of the said claimants, as by their complaint appears: we, being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the circuit court of the United States for the 9th circuit, sitting in and for the eastern district of Louisiana, together with this writ, so that you have the same at the city of New Orleans on the third Monday of May next, in the said circuit court,

to be then and there held, that the record and proceedings aforesaid being inspected, the said circuit court may cause further to be done therein to correct that error what of right and accordtng to the law and custom of the United States should be done.

Witness the honorable Roger B. Taney, Chief Justice of the Supreme Court of the United States, this second day of February, A. D. 1838, and 62d year of the Independence of the United States of America.

Signed, T. W. COLLINS,
Deputy Clerk of the Circuit Court of the United States for the 9th Circuit, Eastern District of Louisiana.

Filed 2d February, 1838.

T. W. COLLINS, *Dy. Clerk.*

Citation of Appeal.

THE UNITED STATES OF AMERICA, *ss.*

To Jonathan Strout, A. W. H. Clapp, and Wyer and Noble, greeting:

You are hereby cited and admonished to be and appear at circuit court of the United States for the 9th circuit, to be holden at New Orleans, on the 3d Monday of May next, pursuant to a writ of appeal and an order of appeal granted by the district judge of the United States for the eastern district of Louisiana, filed in the clerk's office of the said district court of the United States for the eastern district of Louisiana, wherein James Foster, Sen., James Foster, Jun., Amos Palmer, and Alexander S. Palmer, claimants of the ship Louisville, her tackle, apparel, and furniture, are appellants, and you are appellies, to shew cause, if any there be, why the decree rendered against the said appellants, as in the said appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness my hand and seal this 2d day of April, A. D. 1838.

Signed P. K. LAWRENCE, [L. S.]
U. S. Judge.

Marshal's Return.

Served, 3d April, 1838, a true copy of the within on H. Lockett, libellants' attorney, by leaving the same at his office, Royal street, New Orleans, in the hands of a free person, of lawful age.

Returned 9th April, 1838.

Signed, H. BAWN,
U. S. Dep. Marshal.

And afterwards, on the 21st May, 1839, the following entry of record was made, to wit:

TUESDAY, 21*st May*, 1839.

Present: Honorable John McKinley, presiding judge; P. K. Lawrence, district judge.

JONATHAN STROUT
vs.
SHIP LOUISVILLE. } No. 337.

On Appeal from the District Court.

On motion of H. Lockett, Esq., proctor for libellants and appellees, it is ordered that this cause be fixed for trial for Saturday next, at 10 o'clock, A. M.

And afterwards, to wit, on the 25th May, 1839, the following entry of record was made:

SATURDAY, *May 25th*, 1839.

Present: Honorable John McKinley, presiding judge; P. K. Lawrence, district judge.

JONATHAN STROUT
vs.
SHIP LOUISVILLE. } No. 337.

On motion of L. C. Duncan, Esq., of counsel for the appellants, the testimony *de bene isse*, taken by T. W. Collins, United States commissioner, was opened in open court.

And afterwards, to wit, on the 27th May, 1839, the following entry of record was made:

MONDAY, *May 27th*, 1839.

JONATHAN STROUT
vs.
SHIP LOUISVILLE. } No. 337.

The court, having maturely considered this case, now order, adjudge, and decree, in conformity with the opinion this day delivered in writing, that the decree of the district court be reversed and held for nought, and that the appellants recover of the appellees their costs in this behalf expended. And it is further decreed and ordered, that this case be remanded to the district court, with instructions to dismiss the libel of the libellants.

And afterwards, to wit, on the 27th May, 1839, the following decree was filed:

SHIP LOUISVILLE
vs.
JONATHAN STROUT et als.

This case comes before this court upon an appeal from the decree of the district court for the eastern district of Louisiana.

The appellees, owners of ship Harriet, filed their libel, in the court below, for collision, and upon the trial the court rendered a decree in favor of the libellants, for $2,701 7 cents. By the evidence it appears that the Harriet had passed over the bar through one of the passes or outlets at the mouth of the Mississippi river, outward bound, on the 26th of May, 1836, and came to anchor near the bar. The Louisville, lying below a distance of several miles, weighed anchor with a fresh and favorable wind for coming in, through the same pass; as she approached the bar the wind died away, and the current being stronger than usual, owing to a strong wind from the south the night before, she drifted and ran afoul of the Harriet. These passes, it appears, are intricate and difficult to navigate, and subject to counter and under currents. If the wind die away when a ship is coming in, she is certain to drift and become unmanageable. Knowing these facts, a prudent master would never anchor his vessel in the thoroughfare of one of these passes. The evidence shows, however, that the master of the Harriet did anchor his vessel immediately in the thoroughfare, and that too, after having been run afoul of by another vessel about a year before, at or near the same place.

There are four possibilities under which a collision may occur:

First, it may happen without blame being imputable to either party; as when the loss is occasioned by a storm, or any other *vis major*. In that case the misfortune must be borne by the party on whom it happens to light, the other not being responsible to him in any degree.

Secondly. When there has been a want of due diligence or skill on both sides, in such case the rule of law is, that the loss must be apportioned between them, as having been occasioned by the fault of both.

Thirdly. It may happen by the misconduct of the suffering party only, and then the rule is, that the sufferer must bear his own burthen.

Lastly. It may have been the fault of the ship which run the other down, and in this case, the injured party would be entitled to entire compensation from the other. The Woodrop Sims 2, Dodson's Rep. 83. The third rule here laid down, it seems to me, applies with great force to the case under consideration, the misconduct on the part of the master of the Harriet, in anchoring his ship immediately in the thoroughfare, is fully made out by the proof, while on the contrary there is no fault proved, going to show mismanagement, want of skill or negligence on the part of the master of the Louisville. It is true that the opinions of some nautical

men, found in the evidence, show that it was possible for the Louisville to have avoided the collision, had every thing been done that it was possible to do. But the law imposes no such diligence on the party in this case; so far as the Harriet was concerned, the Louisville was entitled to the full use of the thoroughfare of the pass; the master of the Harriett having obstructed it, with a full knowledge of the danger of doing so, has been guilty of such misconduct as to deprive the appelees of the right of action against the appellants, (3 Hunts, Con. 230.)

It was insisted by the counsel of the appelees, that the Harriet being at anchor, and the other ship under sail, that the latter was therefore liable. It is true if a ship be at anchor, with no sails set and in a proper place for anchoring, and an other ship under sail occasions damage to her, the latter is liable. But the place where the Harriet anchored was an improper place, and therefore the appellees must abide the consequences of the misconduct of the master. Wherefore, it is decreed and ordered that the decree of the district court be reversed, and held for naught, and that the appellants recover of the appellees their costs in this behalf expended; and it is further decreed and ordered, that this case be remanded to the district court with instructions to dismiss the libel of the libellants.

And afterwards to wit, on the 25th May, 1839, the following testimony was filed.

UNITED STATES OF AMERICA,
Eastern District of Louisiana, ss.

Be it remembered, that on this 27th day of April, in the year of our Lord 1838, before me, T. W. Collins a commissioner duly appointed by the district court of the United States for the eastern district of Louisiana, under and by virtue of the act of Congress enritled "An act for the more convenient taking of affidavits and bail in civil causes, depending in the courts of the United States," personally appeared Henchman S. Soule a witness for the libellants in a civil suit in admiralty, under appeal from the said district court now depending in the circuit court of the United States, for the 9th circuit and eastern district of Louisiana, wherein John Strout et als, are libellants, and the ship Louisville is libelled.

And the said Henchman S. Saule being by me duly and carefully examined, and cautioned and sworn, to testify the whole truth, did depose and say: Witness recollects when the ship Louisville ran foul of the ship Harriet at the mouth of the Mississippi; it occurred in the month of May A. D. 1836; witness was master of the ship Francis Ann, then lying on the bar; the Harriet was at anchor, the ship Louisville was coming in, the wind was, as witness supposes, and as well as he can recollect southward east; the wind was light, the sea heavy, and in appearance, the Louisville could not steer well, she was going at the rate of two and a half to four

knots an hour; witness saw the Louisville when she first hove in sight; the event occurred, as well as witness can recollect, between four and six o'clock in the evening, perhaps later; witness judges that he was about a half a mile more or less from the Harriet, sufficiently near to hear them hollowing, but could not hear what was said; witness heard a chain rattle, which he supposes was that of the Harriet paying out cable to avoid the Louisville; witness has been fourteen years at sea, he has traded to New Orleans as master of a vessel for the last seven years; witness being ask whether or not on his opinion as a seaman, the Louisville could have avoided running foul the Harriet, the attorney for the claimants excepted, to the question as illegal, to which question witness answering, says, that the Louisville could not have avoided the Harriet, except she the Louisville let go her anchor, which if she had done she might have avoided the Harriet, if she had gone to leeward, by the current sooner, she might have avoided the Harriet; there was sufficient water and room around the Harriet for the Louisville to pass; witness presumes this was the case, because the ship commanded by witness had plenty of water, and the Harriet lay only half a mile off; witness does not know what was the depth of water where the Harriet lay; where witness lay there was eleven feet, and the Harriet lay half a mile outside of witness ship. Witness would have considered himself in good anchorage ground, he had been anchored where the Harriet was; witness has several times anchored his vessel about, and very near, the place where the Harriet was, witness has frequently seen vessels anchor about the place where the Harriet was; on the day after the occurrence, witness saw vessels anchor inside of where the Harriet was laying.

Cross Examined.

Witness does not recollect the day of the month on which the event occured, he thinks it was between the 24th and 27th of May, 1836; witness left the bar on the 28th of said month; witness is certain that the wind was light, witness was lying southeast of southwest pass, nearly outside of the bar, on a lump existing in that place in eleven feet water; the vessel commanded by witness drew sixteen feet two inches; it is a very common occurrence for a vessel of the tonnage of the Louisville to loose her steerage way in approching the bar under such a wind as was then blowing. The Harriet was bound out, had got out, and had come to anchor outside the bar before the accident; the impression of witness now is, that the Louisville was in sight from two to four hours before the accident; witness had nothing else to do, and was looking out with his glass at the time; witness is positive that he was then lying on the bar, that he saw the Louisville and the Harriet, that he saw the collision between them, but the details as to the wind, tide and particular circumstances, are the impressions left upon his mind, as recollected at this distant period.

Re-examined in Chief.

Witness is positive that at the time of the collision, the Harriet was at anchor and the Louisville was under sail.

Signed, H. S. SAULE.

UNITED STATES OF AMERICA,
Eastern District of Louisiana, City of New Orleans ss.

I, Thomas Wharton Collins, a commissioner duly appointed on the 8th July, 1836, by the district court of the United States for the eastern district of Louisiana, under and by virtue of the acts of Congress, entitled "An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," passed February 20th, 1812, and the act of Congress, entitled "An act in addition to an act, entitled 'An act for the more convenient taking of affidavits and bail in civil causes, depending in the courts of the United States,' " passed March 1st, 1817, and the act passed September 24, 1789, entitled "An act to establish the judicial courts of the United States," do hereby certify, that the reason for taking the foregoing deposition is, and the fact is, that the witness was bound on a voyage to sea, and was about to go out of said district, to a greater distance than one hundred miles from the place of trial before the time of trial, and would not probably be within the same at the time of trial.

I, further certify, that on the 27th day of April, A. D. 1838, I was attended by Henry Lockett, Esq., libellants proctor, and G. B. Duncan, Esq., claimant's proctor, who both attended by mutual consent for the taking of this deposition, and by the witness and witnesses was by me carefully examined, and cautioned and sworn to testify the whole truth, and the deposition was by me reduced to writing, in the presence of the witness, and after carefully reading the same to the witness, he subscribed the same in my presence. I have retained the said deposition in my possession for the purpose of sealing up, directing and delivering the same with my own hand into the court for which the same was taken, I further certify that I am not of counsel or attorney to either of the parties in said deposition mentioned, or in any way interested in the event of of said civil cause depending between Jno. Strout et als., and the ship Louisville.

In testimony whereof, I have hereunto set my hand and seal this
[L. S.] 27th day of April, in the year of our Lord one thousand eight hundred and thirty-eight.

Signed, T. W. COLLINS,
U. S. Commissioner, District Court U. S. for the Eastern District of Louisiana

Endorsed: Opened on motion of L. C. Duncan, Esq., in open court, this 25 May, 1839.

D. N. HENNEN, *Clerk.*

And afterwards to wit, on the 27th day of December, 1839, the following petition of appeal was filed.

To the Honorable the Circuit Court of the United States for the 9th Circuit and Eastern District of Louisiana.

The petition of appeal of Jonathan Strout et als. libellants of the ship Louisville,

Respectfully shews: That your libellants are advised and believe there is error in the decree of this honorable court, dismissing this libel of the libellants.

Wherefore, they pray and appeal to the Supreme Court of the United States, upon executing bond according to law for the costs.

Signed, H. LOCKETT,
Proctor for Libellants.

Endorsed: Be it so, on the appellant's giving bond in the sum of five hundred dollars, conditioned according to law, with J. P. Forthingham as surety.

(Signed.) J. McKINLEY.

Filed, December 27, 1839.

(Signed.) D. N. HENNEN,
Clerk.

And afterwards to wit, on 31 December, 1839, the following bond was filed.

Know all men by these presents that we, Jonathan Strout et als., owners of ship Harriet, by J. P. Frothingham, our attorney, as principal, and J. P. Frothingham as surety, are held and firmly bound unto the owners of ship Louisville in the just and full sum of five hundred dollars, to the payment whereof we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents. Signed with our hands and sealed with our seals, this 31st day of December, 1839.

Now the condition of this obligation is such, that whereas the said Jonathan Strout and others has this day taken an appeal to the Supreme Court of the United States from the decree of the circuit court of the United States for the ninth judicial circuit and eastern district of Louisiana, in the case of Jonathan Strout et als. vs. ship Louisville, rendered on the 27th day of May, 1839, if the said Jonathan Strout et als. prosecute to effect their said appeal, then this obligation to be null and void, otherwise to remain in full force and virtue.

(Signed.) JON. STROUT, et als.
Owners of Ship Harriet. [L. S.]

By J. P. Frothingham, Atty.
J. P. FROTHINGHAM. [L. S.]

Signed, and delivered in the presence of
H. LOCKETT.

CLERK'S OFFICE, UNITED STATES CIRCUIT COURT,
Ninth Circuit and Eastern District of Louisiana.

I, Duncan N. Hennen, clerk of the said court, do hereby certify that the foregoing fifty-eight pages contain a true copy of the proceedings, process, pleadings, documents, and evidences, and other matters on file, and of record, in a certain cause, wherein Jonathan Strout et als. were libellants, and the ship Louisville was libelled, so fully as appears by the record remaining in this office, said record being the No. 337 of the docket of said court.

Witness my hand and the seal of said court at New Orleans, this 30th of April, 1840, and of the Independence of the United States the 64th.

DUNCAN N. HENNEN,
Clerk.

I, Philip K. Lawrence, one of the judges of the circuit court of the United States for the ninth circuit and eastern district of Louisiana, do herby certify that Duncan N. Hennen, who subscribed the above certificate is the clerk of said court, and that all due faith and credit are and ought to be given to his attestations as such, and that the above attestation is in due form of law.

Given under my hand and seal this first day of May, 1840.

P. K. LAWRENCE,
U. S. Judge. [L. S.]

Writ of Appeal.

UNITED STATES OF AMERICA, *ss.*

The President of the United States of America to the Judges of Circuit Court of the United States, Ninth Judicial Circuit and Eastern District of Louisiana, greeting:

Because in the record and proceedings, as also in the rendition of a decree of a libel, which is in the said circuit court before you or some of you between Jonathan Strout and others, libellants, and the owners of the ship Louisville, defendants, a manifest error hath happened to the great damage of the said Jonathan Stront and others, as by their complaint appears.

We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if decree be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at the city of Washington on the second Monday of Jannary next, in the said Supreme Court to be then and there held, that the record and proceedings afore-